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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 280

PASQUALE J. ACCARDI, ET AL., PETITIONERS

v.

THE PENNSYLVANIA RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (R. 25) is reported at 341 F. 2d 72. The opinion of the district court (R. 19) is reported at 229 F. Supp. 193.

JURISDICTION

The judgment of the court of appeals (R. 30) was entered on January 25, 1965. On April 27, 1965, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including June 21, 1965 (R. 31). The petition was filed on June 21, 1965, and granted on October 11, 1965 (R. 32). This Court has jurisdiction under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Employees whose jobs with the respondent railroad were abolished in 1960 were paid separation allowances based upon the number of months in which they had worked at least one day for the railroad. The question presented is whether those employees whose employment was interrupted by military service are entitled to allowances equal to what they would have received had they been continuously employed by the railroad during their absence in the service.

STATUTES INVOLVED

1. Section 8 of the Selective Training and Service Act of 1940, 54 Stat. 885, 890, as amended, 50 U.S.C. App. (1946 ed.) 308, provides in pertinent part:

> (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service * * * shall be entitled to a certificate to that effect upon the completion of such period of training and service * * *.
>
> (b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—
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> * * * * *

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

* * * * *

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such a person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

* * * * *

2. The provisions of Section 9(c)(1) of the Selective Service Act of 1948, 62 Stat. 615 (renamed the "Universal Military Training and Service Act" by the Act of June 19, 1951, 65 Stat. 75), 50 U.S.C. App. 459, are identical with those of Section 8(c) of the Selective Training and Service Act, but Section 9(c)(2) of the 1948 Act further provides:

It is hereby declared to be the sense of the Congress that any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) should

be so restored in such manner as to give him such status in his employment as he would have enjoyed if he had continued in such employment continuously from the time of his entering the armed forces until the time of his restoration to such employment.

STATEMENT

The facts. The facts are stipulated. Petitioners Pasquale J. Accardi, Jacob Grubesick, Alfred J. Seevers, Anthony J. Vassallo, Abraham S. Hoffman and Frank D. Pryor entered the employ of the respondent Pennsylvania Railroad Company in 1941 and 1942, when they signed on as "oilers" or "firemen" on the steam-operated tugboats then maintained by the railroad in New York Harbor (R. 4–5). Each petitioner's railroad employment was interrupted by military service during World War II. After approximately three years of wartime service, petitioners were honorably discharged from the armed forces and restored to their former positions with the railroad (R. 5).

Subsequently, respondent replaced almost all of its steam tugboats with diesel vessels, and, in 1959, along with the other railroads operating tugboats in the Port of New York, "abolished" the position of "fireman-oiler" on diesel tugs, precipitating a serious strike.[1] The dispute was finally settled on December 2,

[1] While the steam tugboats had required the services of two men in the engine room (an engineer and a fireman), the railroads contended that the diesel vessels required only an engineer. The background of this dispute—part of the so-called "featherbedding" controversy in the railroad industry—is more

1960, by a collective bargaining agreement between various railroad companies (including respondent) and the unions representing unlicensed engine-room personnel (including petitioners) (R. 5–6).

The agreement of December 2, 1960 (R. 9), eliminated the position of "fireman-oiler" on diesel-powered tugboats operated by the railroad in New York Harbor as of December 31, 1960, subject to certain conditions.[2] An employee with more than twenty years' seniority as an oiler as of December 1, 1960, was given the option of remaining in the railroad's employ or accepting a discharge together with severance pay (termed "separation allowance" in the agreement). Oilers with less than twenty years' seniority were simply dismissed with separation allowances. The amount of the separation allowance paid each discharged employee was based upon his "length of compensated service" with the railroad (R. 10), defined as follows (R. 10):

> A month of compensated service is any month in which the employee worked one or more days; a year of compensated service is 12 such months or major portion thereof.

On December 1, 1960, each petitioner lacked (by a matter of months) twenty years' seniority with the

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fully described in *Baltimore & Ohio R. Co.* v. *United Railroad Wkrs.*, 176 F. Supp. 53 (S.D. N.Y.), affirmed in part and reversed in part, 271 F. 2d 87 (C.A. 2), vacated and remanded, 364 U.S. 278.

[2] No prior collective bargaining agreement involving these employees had made provision for the abolition of an entire class of employees (R. 16–17).

railroad (R. 7). Accordingly, as provided in the agreement (R. 10), on December 31, 1960, all six were dismissed from their jobs with separation allowances (R. 6). In computing petitioners' separation allowances, respondent did not credit the years they had spent in military service.[3] Petitioners contended that the Selective Training and Service Act of 1940 entitled them, as re-employed veterans, to be treated as having rendered compensated service throughout their time in the armed forces for purposes of computing the separation allowances due them. It is stipulated that, if so treated, each was entitled to $1,242.60 more than respondent paid them. When respondent declined to adjust their allowances, the United States Attorney instituted this action in the district court on the veterans' behalf.[4]

The proceedings below. Both sides moved for summary judgment on the basis of the stipulated facts (R. 1). On April 28, 1964, the district court rendered a decision in favor of the petitioners. 229 F. Supp. 193 (R. 19). The court reasoned that: (1) Section 8(b)(B) of the Act required veterans to be restored to their former civilian employment in positions of "seniority, status, and pay" comparable to those which they would have achieved had they been continuously employed; (2) payment of a "separation allowance" came within the concept of seniority, status, and pay;

[3] The collective bargaining agreement makes no reference to veterans' rights.

[4] The Department of Justice represents these veterans pursuant to Section 8(e) of the Act, 54 Stat. 885, 891, 50 U.S.C. App. (1946 ed.) 308(e).

and (3) had petitioners been continuously employed by the railroad during their military-service time, they would have been entitled to receive separation allowances in the amounts they claimed.

"With some doubts," the court of appeals reversed. 341 F. 2d 72 (R. 25). It recognized that "[i]f the separation allowances granted to plaintiffs in 1960 come within the statutory concepts of 'seniority, status, and pay,' plaintiffs are entitled to be treated as if they had kept their positions continuously during World War II." But the court concluded that these allowances were subject, rather, to the "other benefits" clause of Section 8(c) of the Act, which provides that a veteran restored to his former position

> * * * shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces * * *.

Since time spent on furlough or leave of absence was not included in determining an employee's separation allowance, the court reasoned that military-service time should also be excluded, and, on this ground, reversed the district court's judgment.[5]

[5] The district court had rejected respondent's additional defense that since the December 2, 1960, agreement had been entered into more than one year after plaintiffs' re-employment, the Act had no application. The court had ruled that the veteran's right under Section 8(c) not to be discharged without cause within one year after restoration to his former civilian employment was separate and distinct from his right to be restored without loss of seniority status, and pay. The court

ARGUMENT

Introduction and summary

When their jobs were abolished by the respondent railroad, petitioners received "separation allowances" (severance pay) in proportion to the number of months of "compensated service" that they had rendered. Compensated service was defined as those months in which an employee worked at least one day for respondent. Petitioners' employment with respondent was interrupted by a period of service in the armed forces. The ultimate question in this case is whether respondent's refusal to treat this period as compensated service for the purpose of computing the allowances to which petitioners were entitled violated Section 8(c) of the Selective Training and Service Act, which requires employers to restore returning veterans, like petitioners, to their former positions (or positions of "like seniority, status, and pay") "without loss of seniority." We submit that it did. If petitioners' military-service time is not included for this purpose, they will be denied benefits of seniority which Congress intended to preserve for them.

The term "seniority" as used in the statute refers to those benefits or perquisites granted employees au-

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had noted that if the year time limit against discharge without cause were read as a limitation on the other benefits of the Act, after the lapse of a year an employer and union could redraw an agreement so as to nullify the benefits conferred on veterans by the Act. The court of appeals found it unnecessary to pass on this issue. The district court's ruling was clearly correct (see pp. 12–13, *infra*).

tomatically upon the basis of continued employment. If, for example, employees of a particular class are automatically given a pay raise every three years, that raise is a benefit flowing from seniority. Seniority is "lost", within the meaning of the statute, when a re-employed veteran is denied a benefit he would have obtained by virtue of seniority but for the interruption of military service. For seniority purposes, the employer is required to treat the veteran as if he had remained continuously employed. Thus, in our earlier example, if the veteran worked for a year and then served in the armed forces for two, upon his return he would be entitled to the automatic pay raise, just as if he had remained continuously employed for three years.

Two issues are in dispute in this case. The first is whether the separation allowances granted petitioners constitute a benefit in fact flowing from seniority. We show, in the first part of our argument, that they do. These allowances were not intended as compensation for services actually rendered the employer. Nor were they—in contrast to, say, a promotion to executive rank—an exercise of managerial discretion. Viewed realistically, they were granted purely on the basis of length of employment with respondent—in other words, seniority. On this point, we do not understand the court below to be in disagreement with our position.

The second issue is whether the *kind* of seniority benefit represented by these separation allowances is, as the court below held, somehow excluded from the "without loss of seniority" clause of Section 8(c).

The court held that another clause of 8(c)—that which entitles the returning veteran to participate in such "insurance or other benefits" as are granted "employees on furlough or leave of absence"—establishes a critical distinction between "basic" benefits (*e.g.,* pay) and "fringe" benefits (*e.g.,* separation allowances). The court's view was that the returning veteran is entitled to the same basic benefits that he would have received if he had been continuously employed during the period of his military service, but only to those fringe benefits that he would have received had he been on furlough or leave of absence during that period. We show, in the second part of our argument, that the court's reading of the "other benefits" clause is contrary to the language, the legislative history, and the basic purposes of the statute. The correct reading, we submit, is that the returning veteran is entitled to all benefits flowing from seniority on the same basis as employees who remained continuously employed, and, *in addition,* to any benefits granted employees on leave of absence.

I

THE SEPARATION ALLOWANCES WERE BENEFITS FLOWING FROM LENGTH OF EMPLOYMENT; PETITIONERS, THEREFORE, WERE ENTITLED TO THE SAME ALLOWANCES THEY WOULD HAVE RECEIVED HAD THEIR EMPLOYMENT NOT BEEN INTERRUPTED BY MILITARY SERVICE

A. When Congress passed the nation's first peacetime draft act, it was justly concerned that "he who is called to the colors" not be "penalized on his return by reason of his absence from his civilian job." *Tilton* v.

Missouri Pacific R. Co., 376 U.S. 169, 170–171; *Fishgold* v. *Sullivan Corp.*, 328 U.S. 275, 278. It therefore provided, in Section 8(c) of the Selective Training and Service Act of 1940,[6] that the returning veteran was entitled to be restored to his former civilian job "without loss of seniority." This Court, in a uniform course of decisions,[7] has construed this provision broadly, so as to effectuate the statute's benevolent purposes. The basic principle of these decisions was codified by Congress as Section 9(c)(2) of the 1948 Selective Service Act, which expresses "the sense of the Congress" that the returning veteran be "restored in such manner as to give him such status in his employment as he would have enjoyed if he had continued in such employment continuously from the time of his entering the armed forces until the time of his restoration to such employment." This "continuous employment standard," as declared by Congress and the Court, has the following basic elements.

First. The veteran's seniority is deemed to accumulate while he is in the service, so that his seniority, upon re-employment, is the same as it would have been had he remained in his civilian job (*Fishgold*).

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[6] Now Section 9(c)(1) of the Universal Military Training and Service Act, 50 U.S.C. App. 459. The 1940 Act governs the rights of petitioners, who are veterans of World War II.

[7] *Tilton* v. *Missouri Pacific R. Co.*, 376 U.S. 169; *Brooks* v. *Missouri Pacific R. Co.*, 376 U.S. 182; *McKinney* v. *Missouri-Kansas-Texas R. Co.*, 357 U.S. 265; *Diehl* v. *Lehigh Valley R. Co.*, 348 U.S. 960, reversing 211 F. 2d 95 (C.A. 3); *Oakley* v. *Louisville and Nashville R. Co.*, 338 U.S. 278; *Trailmobile Co.* v. *Whirls*, 331 U.S. 40; *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275.

If, for example, the veteran had 10 years' seniority when he left to enter the armed forces, and was honorably discharged after three years, he is entitled, upon being restored to his former job, to claim 13 years' seniority.

Second. In computing such accumulated seniority, the employer is required to treat the returning veteran not only as if he had never interrupted his employment but as if he had actually remained on the job. The employer cannot treat the returning veteran as if he had been employed but absent on furlough or leave of absence (*Diehl*). The returning veteran acquires the same seniority, for the period during which he was in the service, as acquired by those employees who worked continuously during the same period—not merely the seniority acquired by those employees who were on leave or furlough.

Third. The re-employed veteran is entitled not merely to restoration of seniority in some abstract sense; he is entitled to the benefits or perquisites that seniority confers. Suppose, for example, employees are entitled to a transfer to a better job within the company after 15 years on the job. A veteran who was in the company's employ for 12 years before entering the military service, remained in the service for two years, and was re-employed upon his discharge would be entitled to the transfer after one more year of employment. It makes no difference when a benefit based on seniority arises;[8] the veteran's seniority, for purposes of determining whether

[8] As the facts of this case show, it may be many years after the veteran is re-employed.

he is entitled to the benefit, includes the period of his military service (*Oakley*).

Fourth. Seniority within the meaning of the statute means simply length of employment. A benefit or perquisite of seniority is one that is based upon length of employment—*i.e.*, it may be claimed automatically after completing a specified term of service—rather than upon other criteria. The veteran cannot, for example, claim back wages for the period during which he was in the service; payment of wages is not a perquisite of seniority but compensation for actual work. Nor would the returning veteran be entitled to a promotion that he might have received had he not been in the service, if the promotion was based upon management's judgment as to fitness for a more responsible job. Such a promotion is not based solely on length of service; it is not a right of seniority. In short, only where the qualification for a benefit or advancement is continued employment must the veteran be treated as if he had remained on the job during his period of military service (*McKinney*).[9]

[9] This distinction explains the result, if not always the rationale, of the cases dealing with restored veterans' vacation rights. Where the length of paid vacation is strictly dependent on years of service, the Act entitles a re-employed veteran to include his service time in determining his vacation rights. *Mentzel* v. *Diamond*, 167 F. 2d 299 (C.A. 3). But he may not include his service time where the applicable collective bargaining agreement treats length of vacation as a form of additional compensation for work actually done by the employee. See *Siaskiewicz* v. *General Electric Co.*, 166 F. 2d 463 (C.A. 2); *Dwyer* v. *Crosby Co.*, 167 F. 2d 567 (C.A. 2); *Alvado* v. *General Motors Corp.*, 229 F. 2d 408 (C.A. 2), certiorari denied, 351 U.S. 983.

We do not understand any of the foregoing general propositions to be in dispute in this case. What is in dispute is (1) whether certain benefits flowing from seniority are excepted from the requirements of the "without loss of seniority" clause by language elsewhere in Section 8(c)—a question we take up in Point II—and (2) whether the separation allowances involved in this case were actually granted on the basis of seniority rather than on some other basis—a question to which we now turn.

B. The separation allowances were computed, as provided in the collective bargaining agreement between respondent and petitioners' bargaining representative, on the basis of "compensated service." A month of compensated service was one in which the employee actually worked (as opposed to being absent, albeit employed) at least one day. Since a year of compensated service was defined as twelve such months or a "major portion thereof," it was possible for an employee who actually worked only seven days in the course of a year to receive a full year's allowance. The collective bargaining agreement distinguished between "compensated service" and "seniority." The latter was used to determine whether an employee was entitled to retain his job, and the record does not disclose how it was measured. However, it is clear that the nomenclature used in the collective bargaining agreement does not control petitioners' rights under the Act; "no practice of employers or agreements between employers and unions can cut down the service adjustment benefits which Congress

has secured the veteran under the Act." *Fishgold* v. *Sullivan Corp.*, 328 U.S. 275, 285. If the separation allowances were actually determined according to length of employment, the fact that the parties described the measure as "compensated service" rather than "seniority", and assigned the latter term to some other measure, could not alter petitioners' right to a benefit based upon seniority in the statutory sense of length of employment.[10]

We submit that length of employment was indeed the actual measure here. The separation allowances were not intended as compensation for services actually rendered by respondent's employees. Nor were they based upon the value, skill, training, diligence, or output of the employee, or granted or withheld as a matter of management discretion. Rather, they were granted as part of a comprehensive labor settlement, and it was their function to cushion the impact of

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[10] As the Second Circuit stated in *Borges* v. *Art Steel Co.*, 246 F. 2d 735, 739:

> * * * the meaning of the word "seniority" in the statute is not fixed by the local consensus of one union and one employer. "Seniority" as used in the Act covers benefits flowing from the length of tenure on the job * * *.

In that case, an employee's rate of pay was contingent upon his "consecutive working service." Such consecutive service—time actually on the job—was interrupted by a leave of absence, but "seniority" for other purposes continued to accrue while the employee was on such leave. The employer refused to credit a re-employed veteran's military service time toward his "consecutive working service." The court held that this refusal was improper under the Act. Accord: *Moe* v. *Eastern Air Lines*, 246 F. 2d 215 (C.A. 5); *Alfarone* v. *Fairchild Engine and Airplane Corp.*, 32 F.R.D. 19 (E.D. N.Y.); *Alfarone* v. *Fairchild Stratos Corp.*, 218 F. Supp. 446 (E.D. N.Y.).

the railroad's termination of jobs. Indeed, the allowances may properly be viewed as an exchange for the surrender by the employees of their job rights, based upon seniority.

That the allowances were in fact based upon length of employment is also shown by the method of their determination. They were not proportioned to the actual service rendered the company by the employee. An employee who worked for as little as 19 days spread evenly over two years, and was absent on leave the rest of the time, was entitled to twice the allowance of one who worked 250 days in one year. An employee who worked 200 days spread evenly over 10 years was entitled to a larger allowance than one who worked 2000 days during the same period but was on leave for one of the years. And the allowances were granted automatically on the basis of length of compensated service. No element of managerial discretion entered into determining who would receive them or in what amount.

Thus, to grant petitioners the increased separation allowances that they claim would not amount to paying the returning veteran for work not actually performed, or rewarding him for skills which he might have acquired (but did not) had he remained continuously employed. The increased allowances were a benefit that petitioners would have obtained automatically and without question had they remained in their civilian positions during the period of their military service. It is conceivable, of course, that sickness or some other fortuity might have prevented one

or more of petitioners from working at least one day a month during each of the years in which they were in service. But this could be true in any Section 8(c) case: had the restored veteran remained continuously employed rather than entering the military service, something might have happened—discharge for cause, extended illness, resignation—to deprive him of benefits based upon the length of his employment. This Court has made clear that Congress did not intend "possibilities of this sort to defeat the veteran's seniority rights." *Tilton* v. *Missouri Pacific R. Co.*, 376 U.S. 169, 180–181; *Brooks* v. *Missouri Pacific R. Co.*, 376 U.S. 182, 184–185.

II

THE RETURNING VETERAN IS ENTITLED TO ALL BENEFITS, WHATEVER THEIR NATURE, FLOWING FROM SENIORITY, AND TO SUCH ADDITIONAL BENEFITS, NOT BASED UPON SENIORITY, AS AN EMPLOYEE ON LEAVE OF ABSENCE WOULD BE ENTITLED TO

The court of appeals did not disagree with the point made in the preceding part of our argument—that the separation allowances in this case were benefits flowing from seniority. It based its *dubitante* (see p. 7, *supra*) rejection of petitioners' claim upon the clause in Section 8(c) of the Act that entitles the returning veteran to such "insurance or other benefits" as are granted "employees on furlough or leave of absence." In the court's view, this clause suggests that "miscellaneous fringe benefits" (including separation allowances) must be accorded the returning veteran only to the extent that they would

be accorded an employee who was on leave of absence. Since separation allowances were not granted those employees who by reason of leave of absence were unable to comply with the "compensated service" requirement, the court held that the petitioners were not entitled to include the period of their military service in computing the allowances due them. This construction of the "other benefits" clause is in direct conflict with the decision of the Sixth Circuit in *Hire* v. *E. I. du Pont de Nemours & Co.*, 324 F. 2d 546, 550 (also a severance pay case). We submit, moreover, that it is opposed to the language, the legislative history, and, most pointedly, the purposes of the Act.[11]

A. Section 8(c) confers upon the returning veteran a series of rights: to be restored without loss of seniority; to participate in insurance or other benefits available to employees on furlough or leave of absence; not to be discharged without cause within one year of restoration. These, we submit, are discrete and independent rights. The right to enjoy the benefits available to employees on leave is not expressed as a limitation upon the right to unimpaired seniority, and the latter right is stated in unqualified terms

[11] We recognize that, with regard to separation allowances, the Ninth Circuit seventeen years ago reached the same conclusion as the court below. *Seattle Star* v. *Randolph*, 168 F. 2d 274. But *Seattle Star* preceded, and its rationale in no way reflects, the controlling decisions of this Court which have been handed down in the intervening years. There is also language in some of the vacation cases supporting the court of appeals' approach in this case; but they, as we have indicated (see n. 9, *supra*, p. 13), are distinguishable.

without any suggestion that it is limited to certain kinds of benefits flowing from seniority. Where, as here, severance pay is determined on the basis of length of employment, and a returning veteran is denied the amount of such pay to which he would have been entitled but for the interruption of military service, obviously he has not been restored to the point on the seniority escalator that he would have reached had he remained continuously employed. The court's construction of 8(c) thus leads to the anomalous result that what one clause of the section grants—the right to unimpaired seniority—the next clause in large part retracts by carving out a broad and undefined exception for certain kinds of seniority benefits.

In adopting this strained construction, the court below ignored the obvious purpose which may be attributed to the "other benefits" clause: to confer benefits upon returning veterans beyond those based upon seniority.[12] Suppose that an employer establishes a group insurance plan in which all of his employees are eligible to participate, including those who are on leave of absence. The "without loss of seniority" provision, standing alone, would not entitle an em-

[12] The Act, as noted earlier (p. 13, *supra*), does not purport to restore returning veterans to their civilian positions with all of the advantages that they would have enjoyed had their employment not been interrupted by military service. To take a clear example, the veteran is not entitled to back pay for the period during which he was in the service, even though had he remained continuously employed he would, of course, have been paid for his work. He is entitled only to those benefits that accrue from length of employment. This is capsulized in the requirement that he be restored "without loss of seniority."

ployee inducted into the military service to continue to participate in the insurance plan while in the service, though it might entitle him to seek reinstatement in the plan upon his return. The "other benefits" clause was added for the express purpose of entitling employees to receive, while in service, such benefits as their employers accorded employees on leave of absence. The employer was required to treat an employee absent on military service no worse than he treated employees absent on furlough or leave of absence. The benefits thus conferred were separate from and in addition to the post-restoration benefits conferred by the "without loss of seniority" clause.[13]

B. The legislative history unequivocally supports our reading of the "other benefits" clause. In the bill originally reported out of the Senate Committee on Military Affairs (S. 4164, 76th Cong., 3d Sess.), Section 8(c) provided only for the veteran's rights on his return from military service. It stated (86 Cong. Rec. 10079):

> Any person who is restored to a position in accordance with paragraphs (A) or (B) of subsection (b) shall be so restored without loss of seniority, insurance participation or benefits, or other benefits, and such person shall not be discharged without cause within 1 year after such restoration.

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[13] This is also indicated by the fact that the veteran is entitled only to such "insurance or other benefits" as were provided by the employer "at the time" that the veteran was inducted into the service. The idea is that the employer was not to discontinue those benefits enjoyed by the veteran before he left to join the armed forces, but to continue them if he would do the same for employees on furlough or leave of absence.

This language was amended on the floor of the Senate, without substantial debate and with the support of Senator Sheppard, Chairman of the Senate Committee which reported the bill, for the apparent purpose of adding a guarantee that any benefits accruing to employees absent on other forms of leave should also be enjoyed by the veteran while he was absent in military service (86 Cong. Rec. 10914). In the words of the amendment, the veteran was to "be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time of being inducted into [the military] forces." Senator Sheppard explained (*ibid.*):

> That amendment would make certain that all trainees would receive the same insurance and other benefits as those who are on furlough or leave of absence in private life. It seems to me to be a good suggestion.

Representative May, the Chairman of the House Committee on Military Affairs, introduced on behalf of his Committee an identical amendment to the version of the Selective Service bill then pending before the House of Representatives (86 Cong. Rec. 11366, H.R. 10132, 76th Cong., 3d Sess.). He explained (86 Cong. Rec. 11702):

> Mr. MILLER. In reference to insurance, will that apply to group insurance? Many industrial plants, of course, carry group insurance. Under those contracts they continue their participation while a man is on vacation or fur-

lough. Would they continue those policies in force?

Mr. MAY. This would continue them in force and that is the very purpose of the legislation.

The Senate bill was later substituted for the House bill (86 Cong. Rec. 11755), and enacted (86 Cong. Rec. 12185, 12228).

Thus, it was the understanding of the framers of the "other benefits" clause that it would create rights additional to those conferred in other parts of the legislation. The "without loss of seniority" provision protected the veteran's rights upon restoration. But Congress also desired to give him certain protections while he was in the service. That is why the "other benefits" language was added to Section 8(c).

C. Not only is the reading of the court of appeals contrary to the language and legislative history of the statute; it is inconsistent with the statute's basic purpose. Congress determined that the returning veteran should enjoy the same seniority rights as if he had never left private employment. This objective would suffer if employees were free, as the court below ruled, to withhold such seniority rights with respect to a wide range of benefits which, as the facts of this case graphically demonstrate, are often very substantial."

In addition, it is unrealistic to suggest that a meaningful distinction related to the purposes of the

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[14] Thus, petitioner Accardi was (if his military service is included) entitled to a separation allowance of $5,177.50 (R. 7)—roughly a full year's wages (see R. 10).

Act can be drawn between basic and fringe benefits. In an era when wages are generally high and income taxes steep, labor and management recognize that it is in the interest of employees to take a large part of their compensation in indirect forms. Unions bargain vigorously for a host of diverse benefits [9] besides wages and the "traditional" rights of seniority. To describe these extensive and valuable additional benefits as "fringe" items is a mere play on words; they are increasingly regarded as critical elements of employee remuneration. The exclusion of veterans from benefits which have come to be regarded as essential perquisites of employment would be plainly inconsistent with the statutory scheme.

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[9] Such as pensions and retirement plans (*Retail Clerks Union* v. *N.L.R.B.*, 330 F. 2d 210 (C.A.D.C.), certiorari denied, 379 U.S. 828; *Inland Steel Co.* v. *N.L.R.B.*, 170 F. 2d 247 (C.A. 7), certiorari denied, 336 U.S. 960); profit sharing (*N.L.R.B.* v. *Black-Clawson Co.*, 210 F. 2d 523 (C.A. 6); bonuses (*N.L.R.B.* v. *Citizens Hotel Company*, 326 F. 2d 501 (C.A. 5)); merit pay (*N.L.R.B.* v. *United Brass Works, Inc.*, 287 F. 2d 689 (C.A. 4)); company-furnished housing (*N.L.R.B.* v. *Bemis Bro. Bag Co.*, 206 F. 2d 33 (C.A. 5)); stock purchase plans, (*Richfield Oil Corporation* v. *N.L.R.B.*, 231 F. 2d 717 (C.A.D.C.)), certiorari denied, 351 U.S. 909); vacations (*N.L.R.B.* v. *Century Cement Mfg. Co.*, 208 F. 2d 84 (C.A. 2)); group health insurance (*W. W. Cross & Co.*, v. *N.L.R.B.*, 174 F. 2d 875 (C.A. 1)); and even discounts on gas used for house heating purposes (*N.L.R.B.* v. *Central Illinois Public Service Co.*, 324 F. 2d 916 (C.A. 7)). See, also, Forkosch, *Treatise on Labor Law* (2d ed. 1965), § 557, pp. 854–865; Ross, *Fringe Benefits Today and Tomorrow*, 7 Labor L. J. 476; Note, *Proper Subjects for Collective Bargaining*, 58 Yale L. J. 803.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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